

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DARRYL ROCK,

Plaintiff,

1:08-CV-0853 (GTS/RFT)

v.

AMERICAN EXPRESS TRAVEL RELATED
SERVICES COMPANY, INC.; AEGIS
RECEIVABLES MANAGEMENT INC.; and
RICHARD FERRY,

Defendants.

APPEARANCES:

OF COUNSEL

LAW OFFICE OF RICHARD DiMAGGIO
Counsel for Plaintiff
6 Berkley Road
Glenville, NY 12302

RICHARD L. DiMAGGIO, JR., ESQ.

GOLDBERG & ASSOCIATES
Counsel for Defendant American Express
39 Broadway
New York, NY 10006

JACK GROSS, ESQ.

BOND SCHOENECK & KING, PLLC
Counsel for Defendants Aegis and
Richard Ferry
One Lincoln Center
Syracuse, NY 13202-13455

THOMAS KELEHER, ESQ.
LILLIAN A. ABBOTT-PFOHL, ESQ.
SUZANNE M. MESSER, ESQ.

HON. GLENN T. SUDDABY, United States District Judge

ORDER

In accordance with the Court's rulings in this action made on the record after oral argument on March 18, 2009, 2008, with regard to the parties' motions in this action, it is

ORDERED that Plaintiff's motion for leave to file a "Second Amended Complaint" (Dkt. No. 33) is **GRANTED** in part, and **DENIED** in part, as set forth below; and it is further

ORDERED that Defendant American Express' cross-motion to dismiss for failure to state a claim (Dkt. No. 34) is **GRANTED** in part, and **DENIED** in part, as set forth below; and it is further

ORDERED that Defendants Aegis' and Richard Ferry's cross-motion to dismiss for failure to state a claim (Dkt. No. 35) is **GRANTED** in part, and **DENIED** in part, as set forth below; and it is further

ORDERED that all claims as against Defendant Richard Ferry are **DISMISSED** in their entirety; and it is further

ORDERED that Plaintiff's breach-of-contract claim is **DISMISSED** as against Defendant Richard Ferry only, but **NOT DISMISSED** as against Defendants American Express and Aegis; and it is further

ORDERED that Plaintiff's negligent-hiring claim against Defendant American Express is **DISMISSED**; and it is further

ORDERED that Plaintiff's claim under Section 349 of the New York General Business Law is **DISMISSED** against all defendants; and it is further

ORDERED that Plaintiff's negligence claim is **DISMISSED** against all defendants; and it is further

ORDERED that Plaintiff's claims against Defendant Aegis under the Fair Debt Collection Practices Act, including his claim of telephonic harassment, are **NOT DISMISSED** at this time; and it is further

ORDERED that Plaintiff's conversion claim is **DISMISSED** against all defendants; and it is further

ORDERED that Plaintiff's claim of breach of fiduciary duty is **DISMISSED** against all defendants; and it is further

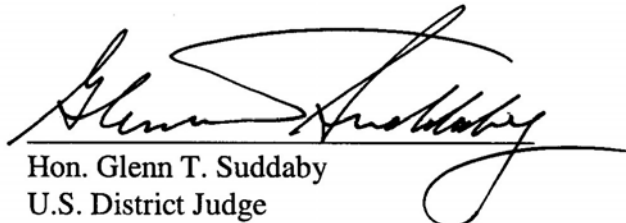
ORDERED that Plaintiff's gross-negligence claim is **DISMISSED** against all defendants; and it is further

ORDERED that Plaintiff's claim of a breach of the implied covenant of good faith and fair dealing is **DISMISSED** against all defendants; and it is further

ORDERED that Plaintiff's claim of defamation of credit is **DISMISSED** against all defendants and it is further

ORDERED that, within **FOURTEEN (14) DAYS** of the date of this Order, Plaintiff shall file, for the review and acceptance of this Court, a signed Third Amended Complaint containing only the following claims, as they are articulated in his proposed Second Amended Complaint: (1) his breach-of-contract claim against Defendants American Express and Aegis; (2) his claims against Defendant Aegis under the Fair Debt Collection Practices Act, including his claim of telephonic harassment.

Dated: March 18, 2009
Syracuse, New York


Hon. Glenn T. Suddaby
U.S. District Judge